BEFORE THE BOARD OF HEARING AID DISPENSERS DEPARTMENT OF LABOR AND INDUSTRY STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of ARM 24.150.501,)	HEARING ON PROPOSED
24.150.2201 and 24.150.2301)	AMENDMENT
pertaining to examination,)	
continuing education and)	
unprofessional conduct)	

TO: All Concerned Persons

- 1. On September 18, 2003, at 10:00 a.m., a public hearing will be held in room 438, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.
- 2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers no later than 5:00 p.m., on September 11, 2003, to advise us of the nature of the accommodation that you need. Please contact Ms. Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdhad@state.mt.us.
- 3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:
- 24.150.501 EXAMINATION PASS/FAIL POINT (1) through (4) remain the same.
- (5) For the purposes of 37 16 403(2), MCA, additional and educational training recognized by the board will be any educational or technical offering, but may not, under any circumstances, involve any services performed on an individual.
- (6) An applicant who applies to re take the examination after failure of two practical examinations and completing the two year waiting period, must complete an additional 180 hours of supervised training in a board supervised training program. In addition, the applicant must complete the equivalent of two years of required continuing education before re taking all sections of the practical examination, with the process to be continued at the discretion of the board.

AUTH: 37-16-202, MCA

IMP: 37-16-403, 37-16-405, 37-16-406, MCA

There is reasonable necessity to amend ARM 24.150.501 to delete sections (5) and (6) to bring the rule into compliance with the provisions of Chapter 224, Laws of 2003 (Senate Bill 109), which passed the last legislative session and became effective July 1, 2003. The legislation eliminated the "failure of two successive practical examinations" provision in 37-16-403(2), MCA.

- 24.150.2201 CONTINUING EDUCATION REQUIREMENTS (1) and (2) remain the same.
- Continuing education courses recognized by the board pertaining to fitting and dispensing hearing aids include those sponsored by the Montana hearing aid society, national institute for hearing instruments studies, American speech language hearing association, the American conference of audioprosthology, the Montana speech and hearing association, the academy of dispensing audiologists, the American academy of audiology, college courses and other such programs approved by the board.
 (4) through (8) remain the same.

37-1-319, 37-16-202, MCA 37-1-306, 37-16-404, MCA IMP:

The Board has determined that there is reasonable REASON: necessity to make these two additions in order to fulfill the Board's obligation pursuant to 37-1-306, MCA, to provide costefficient and geographically accessible continuing education. The Board has determined that because of the quality of their courses and presentation, these additional two sponsors provide meaningful continuing education to licensees, and thus help protect the public by enhancing skills and knowledge of the profession. Additionally, there is reasonable necessity to amend the citations to the authority and implementation statutes to appropriately reflect the basis of the Board's rule, as articulated in the statement of reasonable necessity.

- 24.150.2301 UNPROFESSIONAL CONDUCT (1) through (12) remain the same.
- (13) performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure, including but not limited to: +
- (a) the purposeful removal of cerumen from a patient's ear is unprofessional conduct;
 - (14) through (23) remain the same.

<u>37-1-131</u>, 37-1-319, 37-16-202, MCA IMP: <u>37-1-131</u>, <u>37-16-202</u>, <u>37-16-411</u>, MCA

The Board finds there is reasonable necessity to REASON: amend this rule because patients have been complaining about problems stemming from licensees removing cerumen ["ear wax"] from the patient's ears. The Board believes that the proposed amendment will eliminate the complaints while enhancing the protection of the public. In addition, there is reasonable necessity to amend the authorization and implementation citations to more accurately reflect the basis for the Board's duty and authority to engage in rulemaking concerning the conduct of licensees.

- 4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdhad@state.mt.us and must be received no later than 5:00 p.m., September 18, 2003.
- An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/had, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official version of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.
- 6. The Board of Hearing Aid Dispensers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices regarding all Board of Hearing Aid Dispensers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdhad@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.
- 7. The Board of Hearing Aid Dispensers anticipates meeting subsequent to receipt of transcript and all written commentary to consider those comments and testimony before taking final action on the proposed amendments. Members of the public are welcome to attend the meeting and to listen to the Board's deliberations.
- 8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

9. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF HEARING AID DISPENSERS DAVID KING, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 4, 2003.